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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,278	07/11/2001	Philip M. Walker	10012790-1	9299

7590 08/10/2005

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EXAMINER

TRAN, TONGOC

ART UNIT PAPER NUMBER

2134

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/903,278

Applicant(s)

WALKER ET AL.

Examiner

Tongoc Tran

Art Unit

2134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to Applicant's amendment filed on 5/23/2005.

Claims 1-26 are pending.

Response to Arguments

2. Applicant's arguments with respect to independent claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims, 1, 10 and 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are directed to system and method claims for monitoring a probe in a target but do not recite being implement on a computer related process. Therefore, they are not considered to be in the technological art.

Claims 2-9, 11-18 and 20-26 are also rejected because by their dependency they contain the language of the base claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2134

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 10-14, 19-23, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barritz (U.S. Patent No. 5,499,340) in view of Krishnaswami et al. (U.S. Patent No. 6,618,735, hereinafter Krishnaswami).

In respect to claim 1, Barritz discloses a system comprising:
a target; a probe operable to execute in the target and collect a predetermined set of data associated with the target; and a monitor operable to receive the collected predetermined set of data (e.g. col. 8, line 65-col. 9, line 8, col. 10, lines 1-22 and line 65-col. 11, line 24). Barritz does not explicitly disclose comparing said data with expected data values to determine whether the target has been altered. However, Krishnaswami discloses comparing information with protected information stored in the database to verify whether information has been altered (Krishnaswami, col. 7, lines 9-25). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the teaching of initiating a probe to collect data at a target system to uncover unauthorized usage of product taught by Barritz with the teaching integrity file checking taught by Krishnaswami in order to ensure information has not been altered (Krishnaswami, col. 7, lines 21-25).

In respect to claim 2, Barritz and Krishnaswami disclose the system, as set forth in claim 1, wherein the probe is resident in the target (Barritz, e.g. col. 10, lines 1-17).

In respect to claim 3, Barritz and Krishnaswami disclose the system, as set forth in claim 1, wherein the monitor is operable to send the probe to the target for execution

(Barritz, e.g. col. 8, line 65-col. 9, line 8 and col. 10, lines 1-22).

In respect to claim 4, Barritz and Krishnaswami disclose the system, as set forth in claim 1, wherein the probe repeatedly executes and the predetermined set of data varies for each execution of the probe (Barritz, e.g. col. 9, lines 28-46 and col. 10, lines 18-22).

In respect to claim 5, Barritz discloses the system, as set forth in claim 1, wherein the predetermined set of data includes system attributes and system usage data (Barritz, e.g. col. 10, lines 1-22).

In respect to claims 10-14, the claim limitations are substantially similar to claims 1-5. Therefore, claims 10-14 are rejected based on the similar rationale.

In respect to claims 19-23 and 26, the claim limitations are substantially similar to claims 1-5. Therefore, claims 19-23 and 26 are rejected based on the similar rationale.

In respect to claim 25, Barritz and Krishnaswami disclose the method, as set forth in claim 23, further comprising generating billing data based on the system usage data in response to the system attribute data being verified (Barritz, e.g. col. 1, lines 35-45).

Claims 6-9, 15-18 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barritz (U.S. Patent No. 5,499,340) in view of Krishnaswami (U.S. Patent No. 6,618,735) and further in view of Bruce Schneier ("Applied Cryptography, Second Edition, Protocols, Algorithms and Source Code in C", 1996, pages 30-31, 41-44 and 48-50).

In respect to claims 6-9, Barritz and Krishnaswami disclose the system, as set forth in claim 1. Barritz does not disclose wherein the probe is operable to calculate a signature value of at least a portion of an execution image of the probe; to compare the calculated signature value to an expected signature value; to determine a signature value of a random subset of an execution image of the probe; to generate an encryption key from the signature value for encrypting the collected predetermined set of data. However, Schneier discloses using digital signature with encryption to authenticate the integrity of data transmitted over the network (Schneier, e.g. pages 30-31, 41-44 and 48-50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Barritz's monitoring computer usage over the network with Schneier's teaching of digital signature to authenticate the data received to ensure the integrity of the data transmitted over the network.

In respect to claims 15-17, the claim limitation is similar to claims 2-4. Therefore, claims 15-17 are rejected based on the similar rationale.

In respect to claim 18, Barritz and Krishnaswami disclose the method, as set forth in claim 17, further comprising: sending the data to a monitor, the data including system attribute data and system usage data; verifying the system attribute data; and generating billing data based on the system usage data in response to the system attribute data being verified (e.g. col. 1, lines 35-45, col. 8, line 65-col. 9, line 8, col. 10, lines 1-22 and line 65-col. 11, line 24). Barritz does not disclose sending an encrypted data to a monitor and decrypting the encrypted data using a decryption key. However, Schneier discloses encrypting and decrypting data using public key system (Schneier,

e.g. pages 20-31, 41-44 and 48-55). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of public key encryption system taught by Schneier with Barritz's monitoring of computer usage to protect transmitted data from being tampered.

In respect to claim 24, the claim limitation is similar to claims 18. Therefore, claim 24 is rejected based on the similar rationale.

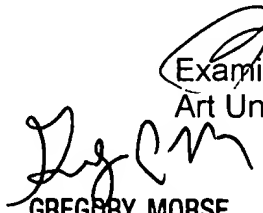
Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tongoc Tran whose telephone number is (571) 272-3843. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse can be reached on (571) 272-3838. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 8, 2005


Examiner: Tongoc Tran
Art Unit: 2134
GREGORY MORSE
SUPERVISORY PATENT EXAMINER
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